PUBLIC SERVICE COMPANIES — MUNICIPAL GRANT TO USE STREETS — EXPIRATION OF GRANT. — The complainant owned a system of tracks upon the greater part of which the municipal grants had expired. The defendant city enacted an ordinance providing, *inter alia*, a maximum fare of five cents on any line in the city operated without a grant fixing the rate of fare. In a bill to enjoin the enforcement of these regulatory provisions, the complainant alleged that an industrial necessity required the operation of the non-franchise lines, and that the enforcement of the ordinance would result in a deficit to the complainant. *Held*, that the rate-fixing provisions were confiscatory and their enforcement should be enjoined. *Detroit United Railway* v. *Detroit*, 39 Sup. Ct. Rep. 151.

A public utility, so long as it retains its mandatory or general charter, may not abandon its service to the detriment of the public. *Colo. & S. Ry. Co.* v. *State Commission*, 54 Colo. 64, 129 Pac. 506; *State* v. *Spokane St. Ry. Co.*, 19 Wash. 518, 53 Pac. 719. See 26 HARV. L. REV. 659. The same should be true at the expiration of a municipal grant to use the streets, so long as the utility retains its state charter, and there is a public necessity. See *Denver* v. *Denver Union Water Co.*, 246 U. S. 178, 190; *State* v. *Spokane St. Ry. Co.*, *supra*. *Contra*, *Laighton* v. *Carthage*, 175 Fed. 145. Conversely it would seem the utility could compel permission to continue in the city streets, at least until a substitute was provided. See 31 HARV. L. REV. 1036. But usually by constitution or statute municipal consent must be obtained before the utility may exercise its state franchise. See *Detroit* v. *Detroit City Railway*, 64 Fed. 628, 638; *Morriston* v. *Tenn. Tel. Co.*, 115 Fed. 304, 305, 306. See 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1226. This practically leaves the city the sole judge of the public necessity to have the utility operate. So it is held the city may oust the utility company when the municipal grant to use the streets terminates. *Detroit United Railway* v. *Detroit*, 229 U. S. 39; *Laighton* v. *Carthage*, *supra*. The city may then impose any conditions precedent to the use of the streets by that utility. In the principal case the ordinance was substantially a statement of such conditions, instead of a grant to the utility as was held in the majority opinion. The dissenting opinion would accordingly be correct if the conditions were imposed when the municipal grant expired. But here, with permission, the utility used the streets for four years thereafter. Such a revocable license becomes irrevocable if further investment was made with the city's knowledge. *Rochdale Canal Co.* v. *King*, 16 Beav. 630; *Spokane Ry. Co.* v. *Spokane Falls*, 6 Wash. 521, 33 Pac. 1072.

PUBLIC SERVICE COMPANIES — REGULATION — ABANDONMENT OF SERVICE AND DISMANTLING OF PLANT WITHOUT CONSENT OF PUBLIC UTILITIES COMMISSION. — The mortgagees of a railroad in foreclosure proceedings asked that a receiver be appointed, operation discontinued, and the plant dismantled. A receiver was appointed, the railroad company appearing and consenting thereto. Upon application by the receiver, the district court ordered that service be abandoned and the plant dismantled. The Public Utilities Commission thereupon moved the court to vacate the order alleging that because of its power to regulate service (1913 SESS. LAWS OF COLORADO, c. 127, § 24), the commission had exclusive jurisdiction over the cessation of service and dismantling of the railroad. *Held*, that the order be vacated. *People ex rel. Hubbard* v. *Colorado Title & Trust Co.*, 178 Pac. 6 (Colo.).

For a discussion of the principles involved in this case, see NOTES, page 716.

SALES — TITLE OF GOODS SUBJECT TO BILL OF LADING — CONSIGNMENT OF GOODS UNDER MISTAKEN BELIEF AS TO EXISTENCE OF CONTRACTUAL OBLIGATION. — The consignor, who had agreed to sell some flour to a third party, consigned the flour to the plaintiff under a mistaken impression that he had

agreed to sell it to him. The plaintiff, believing in good faith that the goods were intended for him, paid a bill of exchange drawn on him, to which an order bill of lading was attached, and demanded the flour from the carrier. The consignor had, in the meantime, discovered his mistake and had induced the carrier to return the flour to him. The plaintiff sued the railroad company for conversion of the flour. *Held*, that he could not recover. *Jones* v. *Chicago, B. & Q. R. Co.*, 170 N. W. 170 (Neb.).

Generally, to-day, the *bonâ fide* purchaser of an order bill of lading acquires an indefeasible title to the goods, and the carrier may not deliver them to another. *Munroe* v. *Philadelphia Warehouse Co.*, 75 Fed. 545; *Commercial Bank* v. *Armsby*, 120 Ga. 74, 47 S. E. 589; UNIFORM SALES ACT, §§ 33, 38. But see *Adrian Knitting Co.* v. *Wabash Ry. Co.*, 145 Mich. 323, 108 N. W. 706. *Cf. Shaw* v. *Railroad Co.*, 101 U. S. 557, 565. The question in the principal case is whether the plaintiff is in fact the purchaser of the bill of lading and of the goods. Here, as everywhere in contractual law, it is expressed, not secret, intention that is considered. *Mansfield* v. *Hodgdon*, 147 Mass. 304, 17 N. E. 544; *Wood* v. *Allen*, 111 Iowa, 97, 82 N. W. 451. See WILLISTON, SALES, § 5. By sending forward the bill of exchange with bill of lading attached, the consignor unequivocally expressed an intention to sell the flour to the plaintiff. *Evans* v. *Marlett*, 1 Ld. Raym. 271; *Wigton* v. *Bowley*, 130 Mass. 252. The plaintiff, in good faith, so understood the consignor's intention and acted on it, completing the sale. Moreover, if actual and not expressed intention were considered, the consignor, although he also intended to sell to one to whom he was under contractual obligations, primarily intended to sell to the person to whom he consigned the goods. It is this primary intention that must control. *Edmunds* v. *Merchants' Transportation Co.*, 135 Mass. 283. *Cf. Cundy* v. *Lindsay*, 3 A. C. 459. See WILLISTON, SALES, § 635. The principal case, therefore, cannot be supported.

WAR ALIENS — STATUS OF ALIEN ENEMIES IN THE COURTS OF A BELLIGERENT. — In a tort action, it appeared at the trial that the plaintiff was an alien enemy, a subject of Germany, but resident in the United States and not in internment. The trial court nonsuited the plaintiff. *Held*, that the nonsuit was improper. *Heiler* v. *Goodman's Motor Express Van & Storage Co.*, 105 Atl. 233 (N. J. L.).

It is uniformly held that an alien enemy resident in the hostile territory cannot maintain an action as plaintiff. *Brandon* v. *Nesbit*, 6 T. R. 23; *Le Bret* v. *Papillon*, 4 East, 502; *Rothbarth* v. *Herzfeld*, 179 App. Div. 865, 167 N. Y. Supp. 199. The modern basis for these decisions — that to allow a recovery in such a case would by so much diminish the resources of the home country and strengthen the enemy country — has no application where the plaintiff resides in the home territory. See *Hepburn's Case*, 3 Bland, Ch. (Md.) 95, 120; *Janson* v. *Driefontien*, [1902] A. C. 484, 505; *Porter* v. *Freudenberg*, [1915] 1 K. B. 857, 868. Further, the common-law rule allowed an enemy subject resident in the home territory to sue on the theory that, by permitting him to remain a resident, the sovereign took him under his protection. *Wells* v. *Williams*, 1 Ld. Raym. 282; *Clarke* v. *Morey*, 10 Johns. (N. Y.) 69. The same principles have been recognized in our courts and the courts of England and Canada during the present war. *Topay* v. *Crow's Nest Pass Coal Co.*, 29 West. L. R. 555 (Canada); *Princess Thurn & Taxis* v. *Moffett*, [1915] 1 Ch. 58; *Arndt-Ober* v. *Metropolitan Opera Co.*, 182 App. Div. 513, 169 N. Y. Supp. 944. See 28 HARV. L. REV. 312. See also 31 HARV. L. REV. 470. One difference should be noted between the English and the American cases. England, applying the common-law rule, allows an enemy subject, even though he has been interned as a civilian prisoner of war, to maintain an action. *Schaffenius* v. *Goldberg*, [1916] 1 K. B. 284. *Cf. Sparenburg* v. *Bannatyne*, 1 Bos. & P. 163.